

June 29, 2015

Testimony of the Brennan Center for Justice on Int. 607

Thank you, Chairwoman Gibson, for holding this important hearing, and for inviting public input on Int. 607, relating to the creation of a “Police Officer Body-Worn Camera Task Force.”

My name is Michael Price, and I am counsel for the Liberty and National Security Program at the Brennan Center for Justice. The Brennan Center is a nonpartisan law and policy institute at NYU School of Law that seeks to improve our systems of democracy and justice. The Liberty and National Security Program focuses on helping to safeguard our constitutional ideals in the fight against terrorism. As a part of that work, we advocated for the creation of an Inspector General for the NYPD in 2013, and we continue to urge reform of discriminatory surveillance practices. At the same time, our work also includes scholarship and advocacy intended to ensure that our privacy is protected in an age of new technologies, such as body cameras.

The Brennan Center commends the Public Safety Committee on its thoughtful approach to equipping police with body-worn cameras. While body cameras have the potential to improve police accountability, their deployment also requires careful attention to the rules on what information is collected, how long it is kept, and who has access to it – whether it is available to other government agencies or to the public under freedom of information laws. We therefore support creation of the Task Force and note that its mandate would include analyzing the critical privacy implications associated with this technology. However, the bill does not provide for consultation with stakeholders, which is necessary in light of the complex issues presented by body cameras. We therefore recommend that such a requirement be explicitly included.

As the Task Force conducts its work, it will no doubt be looking at the NYPD’s current policy governing its body camera pilot program. I would like therefore to highlight a few key issues in that policy that require attention.

Beginning late last year, the NYPD launched a “Body-Worn Camera” pilot program in five precincts, as required by *Floyd v. City of New York*, the landmark stop-and-frisk case. There are currently 60 such cameras in use, although the NYPD is hoping to add another 5,000 devices,

according to recent reports.¹ The NYPD issued Operations Order 48 in 2014,² which unilaterally set the rules for officers participating in the program and did not involve the collaborative process envisioned by the *Floyd* settlement. It is therefore unsurprising that the Order raises a number of privacy issues that deserve close examination by a qualified Task Force.

First, the Order establishes a detailed list of circumstances in which officers may not record, such as attendance at political or religious events covered under the “Handschu Guidelines,” as well as “places where a reasonable expectation of privacy exists,” like “emergency rooms, locker rooms, and restrooms.” At the same time, the Order requires officers to activate their cameras during a range of interactions, including all *Terry* stops and radio runs. There is significant tension between these directives. What happens, for example, when officers respond to a domestic disturbance? Calling the police for help is not the same as wishing to have the interior of your home or apartment committed to film. A victim or witness must affirmatively request not to be recorded and officers are instructed to keep filming if the situation is deemed “confrontational” (which is frequently true for domestic disturbance calls). The proposed Task Force should consider the potential chilling effect on reporting domestic violence as it attempts to strike the appropriate balance between privacy and accountability.

Second, the current policy establishes specific rules for retention and access to body camera recordings that the Task Force should scrutinize. In particular, the Order requires the NYPD to maintain all recordings for one year unless “archived” for various reasons. A Task Force could and should carefully consider whether such a blanket rule is the best practice. On the one hand, a year is a long time to store all recordings, particularly those that are unlikely to contain information relevant to complaints. On the other hand, there is a three-year statute of limitations for filing a federal civil rights claim. The Task Force may wish to recommend a more graduated approach based on the type of information recorded. Moreover, the rules are unclear about whether the data can be shared or disseminated to other officers or law enforcement agencies. The Task Force could consider, for example, whether there should be reasonable suspicion that another incident under investigation is reflected in the video before such sharing occurs. Given the volume of data that is likely to be created as a result of these cameras and the potential for abuse or misuse,³ it is important to have a Task Force that will recommend limitations on sharing to safeguard individual privacy.

Third, the current NYPD policy is silent on public access to body camera footage. Members of the public may request recordings through New York’s Freedom of Information Law, yet the current policy does not appear to account for this eventuality. In order to balance the need for privacy and transparency, it is critical to explore solutions that permit public access while preserving individual privacy. The Task Force would be able to evaluate and propose potential solutions, such as the use

¹ Shawn Cohen and Daniel Prendergast, *NYPD Looks to Add Thousands of New Body Cameras*, N.Y. DAILY NEWS, Jun. 22, 2015, <http://nypost.com/2015/06/22/nypd-looks-to-add-thousands-of-new-body-cameras/>.

² N.Y. POLICE DEP’T, OPERATIONS ORDER 48: PILOT PROGRAM – USE OF BODY-WORN CAMERAS (2014).

³ See, e.g., Robinson Meyer, *Seen It All Before: 10 Predictions About Police Body Cameras*, THE ATLANTIC, Dec. 5, 2014, available at <http://www.theatlantic.com/technology/archive/2014/12/seen-it-all-before-10-predictions-about-police-body-cameras/383456/>.

of technology that would blur or pixilate faces in video released to the public – a technique that has already met with cautious praise in Seattle.⁴

Finally, the existing NYPD policy highlights the evidentiary value of body camera footage for use in criminal prosecutions. But this emphasis does not align with the purpose of the pilot program mandated in *Floyd* – increased police accountability and improved community trust. If the cameras become yet another police surveillance tool, they may well have the opposite effect. The NYPD has ample other tools to gather evidence for criminal prosecutions, and the Task Force should consider the appropriate scope, purpose, and use of body cameras with these points in mind.

In short, the use of body cameras raises difficult questions that have not yet received the intensive consideration, expert advice, and public input they deserve – even though the NYPD already has deployed body cameras and developed rules for their use. Those rules are a start, but they require careful scrutiny and improvement with the input of stakeholders, a requirement that is unfortunately missing from Int. 607. We therefore encourage the Council to require the Task Force to consult broadly as it moves forward with its mandate to ensure that all relevant issues are raised and addressed.

Thank you again for the opportunity to testify today about these important issues. I am happy to answer any questions.

⁴ Jessica Glenza, *Seattle Police Post Blurry Body-Camera Videos to YouTube in Transparency Bid*, THE GUARDIAN, Mar. 9, 2015, <http://www.theguardian.com/us-news/2015/mar/09/seattle-police-posting-body-camera-footage-youtube-transparency>.